79-188

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

UNBORN CHILD ROE, and all others similarly situated, by next friend Alan Ernest
Petitioners

vs.

JOHN J. SIRICA, Judge, United States District Court for the District of Columbia; and the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
Respondents

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF HABEAS CORPUS, AND PETITION FOR A WRIT OF HABEAS CORPUS

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MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF HABEAS CORPUS

The petitioners herein move the Court for leave to file the attached petition for a writ of habeas corpus, and pray that the motion will be granted, and that the respondents will be ordered to show cause why the relief requested therein should not be granted.

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PETITION FOR A WRIT OF HABEAS CORPUS

OPINIONS BELOW

The District Court opinion involved in this case was reported at 422 F Supp 141. (Appendix, infra, pp. A1-A14). Several letters from the Judge's chambers are also involved. (Appendix, infra, pp. A15, A16).

JURISDICTION

The judgment of the District Court was entered on October 21, 1976. (Appendix A1, infra.) The Supreme Court has jurisdiction under 28 USC § 1651, or 28 USC § 2241, to issue a writ of habeas corpus.

WHY RELIEF IS SOUGHT IN THIS COURT

Relief is sought in this Court since the United States Court of Appeals for the District of Columbia Circuit(that is, all judges in regular service)has already been charged in this Court with complicity in criminal extermination for its rulings on the Roe v Wade killings, and the Court of Appeals did not deny the charge. Gaetano v. United States Court of Appeals for the District of Columbia Ciricut, No 78-428, motion to file mandamus denied, 58 L Ed 2d 339.

QUESTIONS PRESENTED

1. For the 35th time, the Supreme Court is petitioned to overrule its 1973 abortion decision, Roe v Wade, 410 US 113. The grounds are that the decision is based on false evidence, and millions of lives have been exterminated in violation of the United States Constitution, and positive criminal statutes; the evidence shows many Roe v Wade killings to be murder in the first degree.

2. The petitioners also demand the overruling of United States v Vuitch, 402 US 62, on the grounds that the construction of the D.C. abortion statute therein was contrary to the intent of the lawmaker, and results in criminal extermination, including murder in the first degree.

3. It is alleged that the District Court's conduct has illegally restrained the petitioners' right to life in violation of the United States Constitution and criminal statutues, including murder in the first degree.

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT: "No person shall... be deprived of life... without due process of law."

FOURTEENTH AMENDMENT: "(N)or shall any State deprive any person of life ... without due process of law."

DECLARATION OF INDEPENDENCE: "We hold these truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life..."

"it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence." Gulf, Colo. & S. Fe Ry v Ellis, 165 US 150, 159-160(1897).

STATEMENT OF THE CASE

1. About October 1, 1976, the case of Doe v Mathews, No. 76-1835, 422 F Supp 141, was filed in the United States District Court for the District of Columbia. Doe, et al., asked Judge Sirica to declare the Hyde Amendment (Congress had prohibited federal welfare for abortions except to save the life of the mother)to be in violation of Roe v Wade, thus unconstitutional, and enjoin it in the District of Columbia.

2. About October 5, 1976, Unborn Child Roe, et al., by next friend Alan Ernest, filed a motion to intervene in Doe v Mathews, supra. The proposed answer and counterclaim attending the motion asked Judge Sirica to declare Roe v Wade to be illegal, null and void on the grounds that it was based on false evi-

dence and millions of lives had been unconstitutionally exterminated. The motion to intervene noted:

> (T)he issue now squarely presented is whether the Federal District Courts will cover up for the United States Supreme Court, as the Watergate conspirators covered up for the President. [1]

3. About October 12, 1976, Judge Sirica held a hearing on Doe's request for a preliminary injunction. Unborn Child Roe was represented by next friend and counsel, who appeared at the hearing and in open court, on the record, informed Judge Sirica that the charge against Roe v Wade was the same charge that Abraham Lincoln brought against the Dred Scott case:

> It is the first of its kind; it is an astonisher in legal history. It is a new wonder of the world. It is based upon falsehood in the main as to the facts . . . upon which it stands. [2]

Unborn Child Roe's counsel also informed Judge Sirica that "having presented charges point blank like this in a federal court there can be no alternative but to allow due process of law to investigate this matter, and to arrive at the truth." [3] But, despite the allegations of Unborn Child Roe's proposed counterclaim that "the Supreme Court

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1. Unborn Child Roe's motion to intervene at 3.

2. Tr. at 26. (This is exact Lincoln quote. The Tr. at 26 contains some words of paraphrase.)

3. Tr. at 26. (English grammar corrected)

of the United States has unconstitutionally exterminated millions of lives by false evidence," [4] Judge Sirica took no action to investigate the Roe v Wade killings.

4. On October 12, 1976, an EXHIBIT A was submitted to Judge Sirica which set out the evidence to show that the Supreme Court had exactly defied the very letter of the Constitution, as well as its spirit, condemned millions of victims to death whom the Constitution endeavored to preserve, and falsified history to make the exterminations appear legal.[5] There were several amendments which Judge Sirica either knew about, or should have known about.

5. By order and opinion dated October 21, 1976, Judge Sirica dismissed the case of Doe v Mathews, 422 F Supp 141. The opinion neither made any effort to get to the truth of the Roe v Wade killings, nor even mentioned that the question about the legality of the Roe v Wade killings arose.

To the contrary, Judge Sirica's seemingly misstated the record to affirmatively suggest that he had not even been called upon to make any judgment about the legality of the Roe v Wade killings:

> In addressing the issues raised in this case, the Court is not called upon to determine whether abortions performed during the first six months of pregnancy or at any time, are

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4. Unborn Child Roe's proposed counterclaim, filed October 12, 1976, at page 10.

5. The evidence is presented in the unprinted EXHIBIT A, PART I, filed in the Clerk's office.

or are not proper . . .[6]

However, Unborn Child Roe's proposed counterclaim charged that

> the Supreme Court of the United States has unconstitutionally exterminated millions of lives by false evidence to which it has twice deliberately adhered . . . the most astounding charge against a court in the entire history of the world.[7]

Judge Sirica was exactly "called upon" to determine the legality of the Roe v Wade exterminations.

If Judge Sirica's opinion had stated that "Denise Doe, et al., and F. David Mathews," or "the original parties" (or other suitable limiting language)had not called upon the court to determine the propriety of the Roe v Wade killings, it would have been accurate. But the district court made the unqualified assertion that "the issues raised in this case" did not call upon the court to decide the propriety of the Roe v Wade killings. Consequently, Judge Sirica factually misstated the record; and the misstatement effectually blotted Unborn Child Roe's existence from the record.

Moreover, this misstatement has been brought to Judge Sirica's attention in two cases in the U.S. Supreme Court, by motion to Judge Sirica, and in several letters to Judge Sirica, over a period of over two and one-half years. Judge Sirica has never, so far as counsel herein is aware, attempted to

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6. 422 F Supp at 144. Appendix, infra, A7.

7. Unborn Child Roe's counterclaim, supra note 4, at p. 10 - 11.

correct this misstatement, and to set the record straight.

6. Moreover, the order and opinion dated October 21, 1976, affirmatively stated that Judge Sirica "need not" act upon the motions to intervene.[8] The opinion made no explanation as to why Judge Sirica "need not" hear Unborn Child Roe's counterclaim, supra note 4. The Federal Rules of Civil Procedures 13 (i) permits district courts to set counterclaims for separate trials even if the claims of the opposing party have been dismissed. Thus Judge Sirica's "need not" ruling leaves unexplained as to how it could be possible, under a government of laws, and not of men, for a U.S. District Court to "need not" investigate an allegation that millions of lives had been unconstitutionally exterminated by false evidence.

7. On October 21, 1976, the day Judge Sirica's order is dated, there was no question of jurisdiction pending appeal because no appeal was pending.

8. In December, 1976, a petition for a writ of mandamus, No. 76-2115, was filed in the United States Court of Appeals for the District of Columbia Circuit to order Judge Sirica to grant the motion to intervene and to set the counterclaim down for separate trial pursuant to Fed R Civ Pro 13(i), supra. The counterclaim asserted independent jurisdiction as if it had been an original action. That petition was denied December 28,

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8. 422 F Supp 141, 144n.4. Appendix A7, infra.

1976, without opinion.

9. Unborn Child Roe also made application for a rule nisi or alternative writ to Chief Justice Warren Burger to order Judge Sirica to grant the motion to intervene and hear the counterclaim. That was rejected by letter dated January 10, 1977.

10. About December 29, 1976, a motion was filed on behalf of Unborn Child Roe for Judge Sirica to proceed to investigate the Roe v Wade killings, despite the dismissal of the original action, 422 F Supp 141. The Fed R Civ Pro 60(b)(6) empowers judges, upon motion and on terms as are just, to grant relief from the operation of a judgment. A hearing was requested on the motion(a court has jurisdiction to determine jurisdiction.) but Judge Sirica never held a hearing on the motion to ivestigate the Roe v Wade killings. The motion noted:

> If Exhibit A[the documentation to show that Roe v Wade was based on false evidence]can be proven wrong, next friend will instantly give it up. The next friend will follow the ancient advice to give up wrong as soon as it is discovered. Yet, until proven wrong, the next friend will continue to press the charges, because he believes Exhibit A to be correct in every material point. The next friend challenges the Supreme Court, or any other court, to prove material points of Exhibit A to be false, in the same careful, detailed and authorititive manner that Exhibit A proves indispensable parts of Roe v Wade to be false.
>
> . . . .
>
> How come it be that I knock on your court's door, and I am answered by silence? How come it be that I seek truth in your courtroom, and I

> find no one to oppose falsehood? How come it be that I ask unto you, and I receive a misstatement of the record which erases all trace of the asking, seeking and knocking? [9]

11. In March, 1977, a letter responding to counsel's query was sent to counsel from Judge Sirica's chambers asserting that Judge Sirica had no "jurisdiction" over Unborn Child Roe's motion to investigate the Roe v Wade killings since the plaintiffs had "appealed its dismissal. The Court of Appeals therefore now has exclusive jurisdiction." Appendix, A 15. The letter cited no authority to prove the assertion. The letter further gave no indication that Judge Sirica had done even one single thing to investigate the Roe v Wade killings.

12. About May 1977, counsel for Unborn Child Roe filed a Memorandum On The Jurisdiction Of A Trial Court To Grant Applicant's Motion Pending Appeal Of The Parties; it showed that the court made rule about jurisdiction pending appeal was based on "common sense" and there were several exceptions that manifestly applied to the motion to investigate the Roe v Wade killings. None of the issues raised in the motion to investigate the Roe v Wade killings were raised by the parties on appeal of the dismissal of Doe v Mathews. The memorandum noted

> both state and federal courts recognize the exception that a trial court retains jurisdiction over collateral matters not involved in

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9. Unborn Child Roe's Motion By Applicant For Intervention For Partial Vacation Of An Order, at 4 & 9.

the appeal. The Supreme Court further recognized that a federal trial court can even act on the matters before the appellate court if necessary to preserve the subject matter.[10]

The parties had not challenged the validity of Roe v Wade in the trial court, or on appeal; they only disputed the Hyde Amendment. Furthermore, trial court action was indispensable to preserve human life.

13. By July, 1977, counsel for Unborn Child Roe had submitted an EXHIBIT C to Judge Sirica to show that, without any examination of the history of the terms of the D.C. abortion statute, 22 D.C. Code 201, or regard to a single rule of statutory construction, the Supreme Court had effectively construed that statute to result in abortion on demand by another name. United States v Vuitch, 402 US 62(1971). EXHIBIT C showed that this result was not only contrary to the intent of the lawmaker, and illegally exterminated unborn lives, but that the Supreme Court had done this without any examination whatsoever to determine if the unborn were being killed in violation of the United States Constitution. In short, EXHIBIT C showed United States v Vuitch to be a fraud on the United States that criminally exterminated the lives of unborn children. [11]

14. By July, 1977, Unborn Child Roe's counsel had submitted an amendment to the proposed counterclaim to suspend Roe v Wade in the District of Columbia and order the plain-

10. Unborn Child Roe's Memorandum On The Jurisdiction Of A Trial Court To Grant Applicant's Motion Pending Appeal of the Parties, at 1.

11. See unprinted exhibit, supra n.5, PART II.

tiff class of doctors and abortion clinics to cease performing abortions except in accordance with 22 D.C. Code 201, with a construction as given by Judge Sirica, consistent with EXHIBIT C.

15. Counsel for Unborn Child Roe sent a letter dated July 7, 1977, to Judge Sirica calling attention to the memorandum on trial court jurisdiction pending appeal, and asking his intention on the motion to investigate the Roe v Wade killings, supra para.10. A letter from Judge Sirica's chambers dated July 29, 1977, repeated that Judge Sirica had "no jurisdiction" over the motion to investigate the Roe v Wade killings pending appeal of the parties to Doe v Mathews. This correspondence made no effort to prove the assertion of "no jurisdiction," or to prove the memorandum on trial court jurisdiction pending appeal(supra para. 12) to be wrong. Nor did the letter set a day for a hearing so that jurisdiction could be discussed. Yet it is significant to note that the letter asserted that the motion to investigate the Roe v Wade killings "will be considered fully" by Judge Sirica should the case be remanded to him. Appendix, A16 infra.

16. Counsel for Unborn Child Roe responded to this by sending a letter to Judge Sirica dated August 10, 1977, noting that the assertion of "no jurisdiction" was made without any authority to support it, and without any attempt whatever to show the memorandum on trial court jurisdiction pending appeal to be wrong. Counsel's letter

expressed the opinion that Judge Sirica was violating the rule of law, and cautioned Judge Sirica of the hazard of refusing to correct error when shown:

1. It is an ancient maxim that, "Well begun is half done." Aristotle, Politics,[Book V] chap.4. And does history not stand ready to testify that once a wrong beginning is made, human nature is all too inclined to defend it to the bitter end, doing ever greater wrongs along the way, with the heart increasingly hardened against right? Was it not just this very process of hardening the heart which led the Pharoah step by step to the Red Sea? And the slave master to Appomatox? And Watergate to the end? And now Roe v Wade? There seems good foundation for the old counsel: "Woe unto the world because of offenses! for it must needs be that offenses come; but woe to that man by whom the offense cometh! Wherefore if thy hand or thy foot offend thee, cut them off, and cast them from thee. . . . And if thy eye offend thee, pluck it out, and cast it from thee." Matthew 18:7-9(K.J.V.)

2. Would a study of Unborn Child Roe's motion [supra para. 10] suggest that you had "well begun"? On October 12, 1976, did you not indisputably have jurisdiction, even by your standard? And did your order of October 21, 1976, misstate the record, suggesting that jurisdiction had never been requested for judging Roe v Wade? And now the unsupported assertion "no jurisdiction" despite the supported MEMORANDUM OF JURISDICTION OF A TRIAL COURT TO GRANT APPLICANT'S MOTION PENDING APPEAL OF THE PARTIES submitted to you showing the very contrary. How many lives were done in this very day while you continued to defend "no jurisdiction." After this long, deliberately adhered to train of events, what would "considered fully" be worth, if and when that day ever came? And how am I to judge this, but by the ancient standard: "Beware of false prophets, men who come to you dressed up as sheep while underneath they

> are savage wolves. You will recognize them by the fruits they bear." Matthew 7:15-17(N.E.B.)
>
> . . . .
>
> 6. On October 12, 1977, one full year will have passed since you first had opportunity to uphold the law for Unborn Child Roe. . . . How can I continue to look to a judge to uphold the law whose timely voice could have saved up to a million lives from illegal destruction, but who instead chooses by his own free will to be silent, presenting to me what appears a lawless excuse amounting to "treason to the constitution"? Carefully considered judgment now counsels me that by October 12, 1977, one of three things must happen: (1) the judge may present to me authorities that show the memorandum on jurisdiction to be plainly wrong, or (2) the judge may grant Unborn Child Roe's motion, or (3) otherwise, on October 12, 1977, the judge must be civilly charged with "crime," . . . . with lawlessly using his office to sustain, perpetuate and cover up homicidal falsehood . . .

Yet, despite the two full months allowed for Judge Sirica to show that he was acting lawfully, counsel for Unborn Child Roe never received such documentation from Judge Sirica; nor did Judge Sirica hold any kind of hearings to investigate the Roe v Wade killings; nor were hearings of any kind held; nor was any further communciation ever received from Judge Sirica.

17. In October, 1977, a motion for leave to file a petition for a writ of mandamus, with petition, No. 77-565, was filed in the U.S. Supreme Court, which charged Judge Sirica with the "crime" of "lawlessly using his office to sustain, perpetuate and cover-up homicidal falsehood." Pet. Mandamus at 8.

Judge Sirica filed no response to deny the charge. The Solicitor General waived his right to file a response unless requested to do so by the Court. In that shape, the Supreme Court summarily denied the motion for leave to file the petition.54 L Ed 2d 468. The Supreme Court did not deny the charge that Roe v Wade was based on "falsehood," nor deny the charge that the Supreme Court had perpetrated the "crime" of millions of illegal killings.

18. Counsel for Unborn Child Roe was informed that on November 7, 1977, the Court of Appeals affirmed Judge Sirica's dismissal of Doe v Mathews, supra para. 1. Counsel is not aware that any appeal was taken; thus no issues of any kind were left on appeal, but only mechanical transmission of the case back to the District Court.

19. About December 12, 1977, the case of Gaetano v Silbert, No. 77-2115, was assigned to Judge Sirica. As with Unborn Child Roe's motion, supra para.10(about whose jurisdiction counsel and Judge Sirica had been disputing for one entire year)the new case demanded an investigation of the Roe v Wade killings, the suspension of Roe v Wade in the District of Columbia, and the enforcement of 22 D.C. Code 201 in Washington. Yet, Judge Sirica recused himself, without any request from counsel, or any explanation to him. This summary recusal is especially to be taken in connection with the assertion to the counsel that the motion to investigate the Roe v Wade killings "will be considered fully" by Judge

Sirica once he obtained jurisdiction. Supra para. 15.

20. About July 5, 1978, counsel for Unborn Child Roe filed a motion for leave to file a petition for a writ of habeas corpus in Doe v Mathews, supra para. 1. The Fed. R. Civ. Pro. 60(b) expressly allows "a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." [12] The petition for a writ of habeas corpus requested Judge Sirica to stop the Roe v Wade killings in the nation's capitol pending a full and fair hearing in the Supreme Court on the legality of the killings. Counsel submitted a Memorandum of Law on the Potential Criminal Liability of Federal Judges Who Close Their Eyes and Enforce, Permit Or Omit To Stop Roe v Wade Killings. [13] The United States Code expressly recognizes the power of a U.S. District Court to suspend a U.S. Supreme Court decision upon new evidence showing the decision to be wrongly decided, and victims being deprived of rights protected by the Constitution and laws of the United States. The memorandum further shows that the mere omission to stop the killings may amount to complicity in criminal extermination.

21. Counsel for Unborn Child Roe sent Judge Sirica a letter dated July 4, 1978, requesting a hearing on the motion for leave to file the petition for a writ of habeas cor-

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12. A court can hear independent actions regardless of any appeal. 7 Moore's Fed. Pr. 2d 602-03.

13. Unprinted exhibit, supra n.5, PART III.

pus, supra para. 20. The letter called upon Judge Sirica to correct the wrong he had done, noting:

> My only purpose is to obtain the due enforcement of the law of the land. . . . I shall quit old views as soon as proven wrong; I shall adopt new views as soon as proven right. The pursuit of the due enforcement of the law of the land shall leave no stone unturned; every lawful means within my power, which offers any reasonable prospect of success, shall be searched out and put to the test. No regard shall be had for any man, not even myself, but only for the due enforcement of the law of the land. And I mean to do no more here than state what I believe to be the duty under the circumstances of this case of every person who has sworn an oath to support the U.S. Constitution, as a lawyer or judge.
> "This people's guides have led them astray."
> Isaiah 9:16
> "robbing the weakest...of their rights,"
> Isaiah 10:2
> "and their hands are busy with deeds of violence.
> "They rush headlong into crime.
> "in furious haste to shed innocent blood;"
> Isaiah 59:6-7
> "Justice is rebuffed and flouted
> "While righteousness stands aloof;
> "truth stumbles in the marketplace
> "and honesty is kept out of court,
> "so truth is lost to sight,
> "and whoever shuns evil is thought a madman."
> Isaiah 59:14-15
> "(T)hey shall be abhorred by all mankind."
> Isaiah 66:24 New English Bible

Judge Sirica did not respond to this letter. No date was ever set so that the motion to file the petition for a writ of habeas corpus, supra para. 20, could be discussed. The motion was not granted. The petition for

a writ of habeas corpus was not heard or granted. No communication whatever was received from Judge Sirica. No hearing of any kind whatever was ever held.

22. In August, 1978, the Application of Unborn Child Roe, et al., v. John J. Sirica, Judge, etc., No. A-215, was filed in the Supreme Court. It demanded that a Justice of the Court suspend Roe v Wade pending a full and fair hearing in the Supreme Court on the legality of the killings. The Application showed that the United States Code expressly recognized the power of a federal judge, including a Justice, to suspend a Supreme Court decision upon new evidence showing that the decision is wrong, and victims being deprived of rights protected by the Constitution and laws of the United States. It also showed that the mere omission to stop the killings might amount to complicity in criminal extermination. The Application, based upon all the evidence and authority submitted in the case, indeed did charge Judge Sirica with complicity in "criminal falsehood and criminal extermination" for his omission to stop the killings. Judge Sirica did not deny the charge. The Application was ultimately denied by the Supreme Court. 58 L Ed 2d 236.

23. By letter dated December 20, 1978, counsel for Unborn Child Roe requested a hearing on the motion for leave to file a petition for a writ of habeas corpus, supra para. 20, on or before January 22, 1979. The letter to Judge Sirica particularly reviewed the hazard of omitting to stop the Roe v Wade

killings and making a mistake of law.

> The petitioners note that Parade Magazine opined that "Federal judge John J. Sirica" was "the hero of Watergate, proving that 'the American system works.'" Now, it appears that if Judge Sirica refused to stop these Roe v Wade killings, and made a mistake of law, then "the hero of Watergate," who supposedly proved that "the American system works," could himself be guilty of complicity in criminal killing unparalleled in the peacetime history of the world. A mistake of law could mean that, on a scale never seen before in the peacetime history of mankind, "The dagger of the assassin was concealed beneath the robe of the jurist." The Justice Case, 3 Trials of War Criminals before the Nuernberg Military Tribunals 985 (G.P.O. 1951).

24. About January 17, 1979, counsel for Unborn Child Roe submitted evidence to Judge Sirica showing that many of the killings that Roe v Wade asserted to legalize were murder in 1868, when the Fourteenth Amendment was adopted, and that absent an amendment, the killings were still murder.[14] This evidence concluded:

> If the United States of America were being ruled over by a Tribunal of mass murderers, holding office for life, issuing naked decrees that mass murder is a constitutional right, in open defiance of the evidence, and presuming to be blindly obeyed by all courts, executives, legislatures and people in the land whatever without question, regardless of the evidence, then surely it would be the most astounding event in the legal history of the human race.

Judge Sirica did not hold the hearing requested by Unborn Child Roe, supra para 23,

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14. See unprinted Exhibit, supra n.5, PART IV.

nor did he hold hearings of any kind for any purpose. No communications of any kind were received from Judge Sirica.

25. Almost three years have now passed since counsel for Unborn Child Roe first informed Judge Sirica in open court that Roe v Wade was based on "falsehood," supra para. 3. In that entire period of time, it does not appear that Judge Sirica has done even one single thing to investigate the Roe v Wade killings. Judge Sirica has permitted the killings to go on over counsel's opposition, and the record does not reflect that Judge Sirica has asked the Supreme Court even one single question about the legality of the killings, much less demanded a single answer. The record shows that Judge Sirica has done nothing.

In April, 1979, Judge Sirica's book on Watergate was published. The newspapers reported that Judge Sirica was paid $500,000 dollars for the book. Judge Sirica has also given numerous interviews for the purpose of promoting and selling the book. The evidence submitted to Judge Sirica shows that while he was busy making a half-million dollars for himself, children were being virtually dragged from his courtroom to be murdered. Judge Sirica's book was entitled "To Set The Record Straight"!

This concludes the historical statement of the case.

II. SUMMARY OF HISTORICAL EVENTS

It will throw additional light on the matter to go back and run the mind over the

string of events set out above. The meaning of the events now appears less confounding and mysterious than when transpiring.

26. WHY, after being informed in open court by counsel for Unborn Child Roe that Roe v Wade was based on "falsehood," (supra para. 3) did Judge Sirica assert in his opinion that he "need not" (supra para. 6) act on Unborn Child Roe's motion to intervene?

Plainly enough now, before Judge Sirica ever wrote that opinion, he predetermined to not oppose the Roe v Wade killings, regardless of any claim that the killings were illegal or murderous; and predetermined to permit the killings without asking even a single question about the legality of the killings.

27. WHY, after counsel for Unborn Child Roe submitted the proposed counterclaim, charging that "the Supreme Court of the United States has unconstitutionally exterminated millions of lives by false evidence," (supra para. 3) did Judge Sirica assert in his official opinion that "the Court is not called upon to determine whether abortions performed during the first six months of pregnancy or at any time, are or are not proper"?(supra para.5)

WHY did the communciation from Judge Sirrica's office(supra para. 15) that, despite that opinion, the motion to investigate the Roe v Wade killings would be "considered fully" by Judge Sirica, when events now show that Judge Sirica did not intend to make any investigation about the Roe v Wade killings?

These things make Judge Sirica look willing to cover up for the Roe v Wade killings, not merely by trying to deceive counsel, but by

asserting a misrepresentation in an official judicial opinion. [15]

28. WHY, after counsel for Unborn Child Roe had repeatedly commented that he would give up the evidence showing Roe v Wade to be based on falsehood as soon as it were proven to be wrong, (e.g., supra para 10), did Judge Sirica omit to prove the evidence to be wrong?

The evidence itself makes clear that the U.S. Supreme Court exactly defied the very letter of the Constitution, as well as its spirit, and condemned millions of victims to death whom the Constitution endeavours to preserve. There does not appear to be any defense that will not amount to a claim that the Supreme Court is above the law and can do whatever it wants without limit. [16]

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15. See 18 USC § 1001, false statements. Based upon the historical evidence, a jury could find that Doe v Mathews, 422 F Supp 141, was a matter within the jurisdiction of the judicial department; the "not called upon" statement, supra para. 5, was factually not true; that the repeated notices of counsel, supra para.5, made the statement knowingly and wilfully false; and that the misstatement was material, the purpose being to cover up for the Roe v Wade killings. Such findings would apparently permit a jury to conclude beyond a reasonable doubt that Judge Sirica had made a criminally false statement.

16. See 18 USC § 242, deprivation of rights under color of law. Were Roe v Wade a mistake of law, then the historical evidence would appear sufficient to permit a jury to conclude beyond a reasonable doubt that Judge Sirica, by acts, or omissions to act, had willfully deprived victims of the right to life under color of law in violation of the United States Constitution and positive criminal statutes. The death of each victim could be punished by a life sentence.

29. WHY, after counsel for Unborn Child Roe submitted the memorandum of law on trial court pending appeal, supra para. 12, and called upon Judge Sirica to either act upon the motion to investigate the Roe v Wade killings, supra para. 10, or prove the memorandum on jurisdiction pending appeal to be wrong, supra para. 16, did Judge Sirica do nothing? WHY did Judge Sirica omit to prove he was acting lawfully even after counsel gave him two months advance notice that if Judge Sirica neither acted upon the motion to investigate the killings, nor satisfied counsel that that he was acting lawfully, then counsel would continue the dispute in another court where counsel intended to allege that Judge Sirica's conduct amounted to the "crime" of "lawlessly using his office to sustain, perpetuate and cover-up homicidal falsehood"?

Plainly enough now, there can be no authority in America on jurisdiction pending appeal to support such a monstrous doctrine that a trial court must duplicate the words and works of the Nazi judges, and shut its eyes on the Constitution, and unquestioningly permit exterminations that violate the express terms of the U.S. Constitution and positive criminal statutes. [17]

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17. See 18 USC § 1503, obstruction of justice. In addressing this statute, it is to be recollected that Chief Justice John Marshall held that a federal court "must take jurisdiction if it should" for "to decline the exercise of jurisdiction which is given . . . . would be treason to the constitution." Cohens v Virginia, 6 Wheat. 262, 404 (1821).

The historical evidence would appear sufficient to

30. WHY, after Judge Sirica was charged in a petition for a writ of mandumus in the U.S. Supreme Court with the "crime" of "lawlessly using his office to sustain, perpetuate and cover-up homicidal falsehood," (supra para. 17) did Judge Sirica not deny the charge and prove it false?

WHY, when Judge Sirica was subsequently charged in an Application in the U.S. Supreme Court with "complicity in criminal falsehood and criminal extermination" did Judge Sirica not deny the charge and prove it false?(supra para. 22).

WHY, after the memorandum, supra para. 20, showed Judge Sirica that if he failed to stop the killings then he might be guilty of complicity in mass criminal extermination, did Judge Sirica do nothing?

WHY, after the memorandum, supra para. 24, showed Judge Sirica that many Roe v Wade killings were murder in the first degree, did Judge Sirica do nothing?

While absolute knowledge is not possible without a direct admission, yet, in light of

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permit a jury to find that Judge Sirica made a false statement in an official judicial opinion, supra n. 15; that he was presented with authority to show that he had jurisdiction to investigate the Roe v Wade killings, supra para. 12 & 20; that he refused to even hold a hearing so that jurisdiction could be discussed; and all the while mass extermination was taking place. Such findings would surely permit a jury to conclude beyond a reasonable doubt that Judge Sirica had dishonestly endeavored to impede the due enforcement of the law of the land.

all the acts and omissions to act, for almost three years, with perfect consistency and singleness of results, it is impossible to not believe that Judge Sirica determined from the very beginning that he would unquestioningly permit, allow, omit to stop, and join with the Supreme Court in the Roe v Wade killings, regardless of any claim that the killings were illegal, criminal, or murderous; that he would not listen and would not change no matter what the law was shown to require. The motion to investigate the Roe v Wade killings, supra para. 10, had warned Judge Sirica of the end awaiting all those whose hands are busy with deeds of violence, and rush headlong in furious haste to shed innocent blood:

> Open thy mouth for the dumb in the cause of all such as are appointed to destruction. Open thy mouth, judge righteously. . .
> . . . .
> If thou forbear to deliver them that are drawn unto death, and those that are ready to be slain;
> If thou sayest, Behold, we knew it not; doth not he that pondereth the heart consider it? and he that keepth thy soul, doth not he know it? and shall not he render to every man according to his works?
> Proverbs 31: 8-9, and 24: 10-12(King James Version)

WHEREFORE, based upon the examination of Roe v Wade, supra n. 5; the examination of United States v Vuitch, supra n.11; the memorandum showing many Roe v Wade killings to be murder, supra n.14 ; and the memorandum showing that federal judges who omit to stop

the Roe v Wade killings may be criminally liable, supra note 13,- the petitioners charge Judge Sirica with complicity in criminal falsehood, [18] and criminal extermination,[19] including mass murder in the first degree.[20]

> If a man shuts his ears to the cry of the helpless,
> he will cry for help himself and not be heard.
> Proverbs 21:13(New English Bible)

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18. Supra note 15. Also, 18 USC § 371, Conspiracy to defraud the United States. This includes any conspiracy by officials to defeat the legitimate action and purpose of the government by misrepresentation or the overreaching of those charged with carrying out the governmental intention. If Justices of the Supreme Court agreed to decree murder to be a constitutional right, it would appear to be just such a conspiracy to defraud the United States.

The historical evidence showing that while Judge Sirica was writing a book to make $500,000 for himself, counsel for the victims presented Judge Sirica with evidence to show that the victims were being dragged from the jurisdiction of his court to be murdered, and Judge Sirica refused to even hold a hearing on jurisdiction, would appear sufficient to connect Judge Sirica to a conspiracy to defraud the United States.

19. Supra note 16; also 22 D.C. Code § 201. And conspiracy to criminal extermination in violation of 22 D.C. Code § 105a or 18 USC § 371.

20. 22 D.C. Code § 2401; 18 USC 1111; and the States' first degree murder statutes. There is no question that this is a national scheme to kill.

An abortion operation, like murder by poison, is premeditated. And judicial conduct is premeditated. From the historical facts, supra, a jury should be permitted to find: (1) that Judge Sirica falsified an official judicial opinion to make it appear that the question of the legality of the Roe v Wade killings had not been raised in a case pending in his

REASONS FOR GRANTING THE WRIT

The evidence shows that the judges of the United States have combined to overthrow the United States Constitution, and establish a government by Judiciary,

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court; (2) that a purpose of the falsification was to cover-up for the Roe v Wade killings (a jury might also note that, while the victims were being exterminated. Judge Sirica cooly discussed, infra A9-A14, the alt .native methods of paying for the killings, as Nazis might have calculated the method of paying for the killings at Dachau); (3) that evidence was presented to Judge Sirica to show that many of the Roe v Wade killings were murder in the first degree; (4) that counsel for the victims attempted to file an independent action to stop the killings (which a court can act upon regardless of the status of any appeal); (5) that Judge Sirica refused to even hold a hearing so that jurisdiction could be discussed; (6) that while the victims were being dragged from the jurisdiction of his court to be killed, Judge Sirica turned a deaf ear to counsel's repeated pleas, over a period of about three years, and sat down and wrote a book to make $500,000 for himself; (7) and that Judge Sirica had sworn an oath to uphold the Constitution and laws of the United States, which imposed upon him a legal duty to stop extermination in violation of the Constitution and laws of the United States.

These findings alone, without need of the multitude of circumstances in the history of the case, supra, would appear sufficient to permit a jury to conclude beyond a reasonable doubt, or any kind of doubt, that Judge Sirica deliberately disregarded his legal duty knowing that the consequence was certain death to others, and that this conduct amounts to complicity in mass murder in the first degree. An investigation would no doubt reveal the identity of the victims.

The same evidence should be sufficient to connect Judge Sirica to a national conspiracy to murder under 18 USC 1117, 18 USC 371, or 22 D.C. Code 105(a).

founded on fraud and murder.

I

It can not be disputed that America was founded on the principle that government derives its "just powers from the consent of the governed." This was adopted by the Continental Congress in the Declaration of of Independence. While the Declaration may not be law in itself, it provides definitions by which the law is to be understood. Gulf, Colo. & S.Fe Ry v Ellis, 165 US 150, 159-160(1896).

The first sentence in the U.S. Constitution sets out this mother principle of democracies: "All legislative powers herein granted shall be vested in a Congress of the United States."

Congress is elected by the people at regular elections, and thus, its laws are derived from the consent of the governed.

The Constitution itself was adopted by the people in convention; thus, it is derived from the consent of the governed.

And Article V of the Constitution provides the means for amending the Constitution, which likewise, makes amendments be derived from the consent of the governed.

II

Under Article III of the Constitution, the federal judiciary is not elected by the people and holds office during good behaviour, in effect, for life.

The federal judiciary has been given no

power to make laws. The lawmaking power, as admitted by the Supreme Court, is the power to make new rules for the future. Ross v Oregon, 227 US 150, 161(1913).

While the judicial power does not admit to lawmaking, it has been decided that it does admit to determining the meaning of statutes, and the Constitution. Marbury v Madison, 1 Cranch 137(1803). But the Supreme Court has no power to make new laws under the guise of construction. Pillsbury v United Engineering, 342 US 197, 199.

The rules used by the courts to construe the meaning of the laws are founded in the principle that laws are derived from the consent of the governed. The purpose of construction is to determine the intent of the lawmaker.

Chief Justice John Marshall recognized this "consent of the governed" as the foundation of the rules that the courts must apply in construing the Constitution.

FIRST: The constitution must be given the meaning "contemplated by its framers." Ogden v Sanders, 12 Wheat. 212, 332(1827) (dissenting opinion)

SECOND: "(I)n no doubtful case would it pronounce a legislative act to be contrary to the constitution." Dartmouth College v Woodward, 4 Wheat. 518, 625(1819).

The foundation under these two rules is too compelling to admit any doubt as to the truth of the two rules.

Since the legitimacy of the Constitution is derived from the consent of the gov-

erned, any true construction must give the Constitution the meaning intended by the people who framed and adopted it. The central question is: To what have the people consented. Any policy of construction that disregards the consent of the governed can not be lawful. And to what the people have consented is susceptable to proof by evidence which can be independently verified. Thus the security of a written Constitution.

The second rule is a necessary corollary of the first. The right of the people to govern themselves being so paramount, it takes careful and clear evidence to warrant a conclusion that, in the U.S. Constitution, the people intended to withdraw from themselves the power to make their own laws on that subject. If, after review of the words of the Constitution, and the historical evidence concerning the meaning of those words, a reasonable doubt remains as to whether the makers of the Constitution intended to prohibit such a law, then the law must stand as valid. The opinions of officials unelected and holding office for life are not to be substituted for the judgments of the people's elected representatives unless the conflict between the law and the Constitution is clear.

The decisions of Chief Justice John Marshall are submitted as a faithful execution of these two principles.

III

In his farewell address, Washington warned that the customary means of overthrowing constitutions was by usurpation:

> If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. 35 The Writings of George Washington 229(Fitzpatrick ed 1940).

IV

The world does not want for examples of democratic constitutions overthrown by the process of usurpation.

Prior to World War II, the German Constitution was thought to be a model of democracy and freedom, "the most liberal and democratic document of its kind the twentieth century had seen," which declared "Political power emanates from the people." Shirer, The Rise and Fall of the Third Reich 88-89(Fawcett Crest paperback 1969). Hitler came to power "within the terms of the constitution." Id., at 255.

Thereafter, by usurpation, Hitler became the "supreme judge" of Germany. The Justice Case, 3 Trials of War Criminals before the Nuernberg Military Tribunals 1011(1951). The decrees of this "supreme judge" were obeyed as law. This "supreme judge" presumed to decree murder to be lawful. And

this "supreme judge" was unquestioningly obeyed by the Nazi judges.

At Nuremberg, the Nazi judges claimed the defense that they could not be held accountable for their crimes against humanity, including "extermination," because they were bound by the "decrees" of this "supreme judge" of Germany. The Justice Case, supra, 983-985, 1010-1014. The Nuermberg court rejected that defense with the observation,"The dagger of the assassin was concealed beneath the robe of the jurist." The Justice Case, supra, 985.

The whole constitutional system had been overthrown by usurpation.

V

The evidence shows that the judiciary of the United States has set upon a course of usurpation astonishingly similar to that traveled by the Nazi judicial system.

The judges of the United States came to power within the terms of the Constitution. The evidence shows that the judges now routinely, as a matter of policy, defy the consent of the governed, and effectively assert their will to be law. See, R. Berger, Government by Judiciary:The Transformation of the Fourteenth Amendment (1977). This book sets out evidence to show that the Supreme Court has generally construed the Fourteenth Amendment in defiance of the intent of its framers. Berger concludes, "Such conduct impels one to conclude that the Justices are become a law unto them-

selves." Id., at 408.

Furthermore, the evidence shows that the Court uses false evidence to defy the intent of the framers. Supra n. 5.

The evidence shows that the Supreme Court has presumed to decree murder to be a constitutional right. Supra n. 14.

The evidence shows that when it comes to constitutional questions, truth has nothing to do with the federal courts: the will of the judge has become the law.

And the evidence shows that the Supreme Court is being unquestioningly obeyed by the federal judiciary. The record shows that Judge Sirica was willing to permit killings in violation of the express terms of the Constitution, and positive criminal statutes, including mass murder in the first degree, without asking even a single question, much less demanding answers.

The evidence shows that in the courts of the United States, the will of the judge has replaced the consent of the governed as the basis of law. By any definition, this is the overthrow of the U.S. Constitution.

VI

The procedures used by the Supreme Court to effect and maintain the Roe v Wade killings deserve special attention.

The Nuremberg court, in outlining the case against the Nazi judicial system, noted that many victims were executed after trials which "did not approach even a semblance of fair trial":

> In many instances they were denied the right to introduce evidence, to be confronted by witnesses against them, or to present witnesses in their own behalf. They were ... denied the right of counsel of their own choice, and occasionally denied the aid of any counsel. The Justice Case, supra, at 1046.

The evidence, supra n.13, at pp.13-18, shows that the Supreme Court has, in broad form, used these very procedures to effect and maintain the Roe v Wade killings.

The Supreme Court itself produced evidence to condemn some victims to death; the Court condemned other victims to death on no evidence whatever; the Court has repeatedly refused to allow its evidence to be cross-examined in a judicial proceeding; the Court has repeatedly refused to allow counsel to represent the victims; and the Court has repeatedly refused to allow evidence to be presented on behalf of the victims to establish their right to life.

When judges presume to decree murder to be a constitutional right, and refuse to even hear the facts, it can not be pretended that it is any longer the government of the United States, - any government of Constitution and laws.

Through Roe v Wade, the Supreme Court has asserted a second method for the government to condemn persons to death.

The first, set out in the Constitution, is by conviction by an impartial jury for violation of express laws enacted by the people and applicable to all in the State;

with right of representation of counsel; with right to confront the accusing evidence and cross-examine it; with right to present evidence on behalf of the accused; and right to be acquitted unless found guilty beyond a reasonable doubt; and provision to stop execution if new evidence is discovered.

The second, set out in Roe v Wade, is for a Tribunal holding office for life to rule the victims out of the human race as inferiors, in violation of the very letter and spirit of the Constitution, and positive criminal statutes.

The evidence, supra n.14, shows that the Supreme Court decreed murder to be a constitutional right, and there does not appear to be any defense that will not amount to a claim that the Supreme Court is above the law,- as Hitler was to Germany, to the Supreme Court is to America.

If it be true, as Chief Justice John Marshall once held in Marbury v Madison, 1 Cranch 137, 163, 176, 178, that "government of laws, and not of men," founded in a "written constitution" deriving its just power from the "supreme" "authority" of "the people" is "the greatest improvement on political institutions," then the overthrow of that government of laws by lawless federal judges may be the most heinous crime in the history of political institutions.

Furthermore, the Declaration of Independence is perverted by the judges to

effectively read that "all Men are created equal,- except those created to die for the convenience of others."

> Alas for you, lawyers ... hypocrites! You are like tombs covered with whitewash; they look well from the outside, but inside they are full of dead men's bones and all kinds of filth. So it is with you: outside you look like honest men, but inside you are brim-full of hypocrisy and crime. Matthew 23:27-29(New English Bible)

CONCLUSION

If it be true, as Jefferson once wrote, that America is an "experiment" to establish that "man may be governed by reason and truth," and that "truth and reason will eternally prevail, however in times and places they may be overbourne for a while by violence," then sooner or later all those judges who authorized or refused to stop the Roe v Wade killings can expect to be called to account by the criminal law.

As Chief Justice John Marshall wrote, for federal judges to "swear" to discharge their duties "agreeably to the constitution," and then "close their eyes on the constitution" and "condemn to death those victims whom the constitution endeavors to preserve" is worse than "solemn mockery," it is a "crime." Marbury v Madison, supra, 179-180. The criminal law will not permit the "dagger of the assassin" to be "concealed beneath the robe of the jurist."

Based upon the examination of Roe v Wade, supra n.5; the examination of United States v Vuitch, supra n.11; the evidence showing many Roe v Wade killings to be murder, supra n.14; and the procedures used to effect and maintain the Roe v Wade killings, supra,- the petitioners herein charge the Supreme Court with criminal falsehood and criminal extermination, including mass murder in the first degree.

If the United States were being ruled over by a Tribunal of murderers holding office for life, and being blindly obeyed by all federal judges who violate the express terms of the U.S. Constitution, and positive criminal statutes, including mass murder in the first degree, without asking even a single question, then surely it would be a fraud without parallel in the legal history of the world, and tantamount to the overthrow of the United States Constitution.

Alan Ernest
Counsel for Petitioners

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DENISE DOE, Et al.,

Plaintiffs

v.

F. DAVID MATHEWS,
Secretary of Health,
Education and Welfare,
et al.,

Defendants

Civil Action No.
76-1835

FILED
Oct 21 1976
James F. Davey,
Clerk

ORDER AND OPINION

This action has been brought by a number of women residents of the District of Columbia and Virginia, a doctor and a clinic to enjoin the Secretary of Health, Education and Welfare from complying with a provision of a federal appropriations statute. The provision, known as the Hyde Amendment, Labor-Labor- HEW Appropriations Act, Pub. L. No. 94-439, § 209 (Sept. 30, 1976), prohibits the Secretary of Health, Education and Welfare (HEW) from using any money appropriated to him for the fiscal year beginning October 1, 1976, "to perform abortions except where the life of the mother would be endangered if the fetus were carried to term." This limitation would apply to funds appropriated for Medicaid, and, as persons eligible for Medicaid benefits or as recipients of Medicaid funds, the plaintiffs claim it is unconstitutional.

I

The operation of Medicaid is primarily governed by Title XIX of the Social Security Act, 42 U.S.C. § 1369 et seq. (1970), as amended, (Supp. V., 1975), and by regulations promulgated thereunder. Basically, it is a system whereby the federal government undertakes to help the states and the District of Columbia 1/ pay for the medical needs of their poor residents. To qualify for this aid, a jurisdiction must establish a medical assistance program to pay for a certain minimum number of medical services for its "categorically needy" residents. See 42 U.S.C. § 1396a(a)(13)(B)(1970); 45 C.F.R. § 249.10(a)(1)(1975). Beyond that, a jurisdiction can also obtain more federal aid if it wishes to pay for certain additional medical services for the categorically needy and other "medically needy" as well. See 42 U.S.C. § 1396a(a)(10)(B)(1970); 45 C.F.R. § 248.10(d)(1)(1975).

Both of the jurisdictions which are relevant in this case-- the District of Columbia and Virginia-- have chosen to set up medical assistance programs for their medically needy residents under Title XIX. Both, in their program plans that have been approved by HEW, have undertaken to pay for, among other things, inpatient and outpatient hospital services, physician services administered in the hospital, office, home or elsewhere,

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1./ Under D.C. Code § 1-267(1973), the District of Columbia is authorized to set up a medical assistance program under Title XIX.

clinic services, and family planning aid. See Dep't of HEW, Medicaid Services State by State (June 1, 1976). Both, in the past, have in general paid for abortions under these plans.

For its part, the federal government under Title XIX undertakes to reimburse participating jurisdictions for all the necessary medical expenses incurred in the administration of the local medical assistance program, but only to the extent of certain percentages, which vary depending on the service, and only to the extent of money appropriated by Congress for the purpose. 42 U.S.C. § 1396b(1970). As the system works in practice, the federal government every quarter makes advance payments to each participating jurisdiction. That payment is intended to approximate the expenses the particular jurisdiction will incur under its medical assistance program during that period. If the payment in fact exceeds or is less than the actual expenses incurred, an appropriate adjustment is made in the following quarter's advance. 45 C.F.R. § 201.5(1975). On October 1, 1976, a new quarter began, and advance payments were presumably sent out at that time in accordance with the limitation imposed by the Hyde Amendment.

Seen in this light, the Hyde Amendment appears to be simply a limitation on the federal government's undertaking under Title XIX to reimburse the jurisdictions participating in the Medicaid program. And the limitation is a narrow one, for the legis-

lative history of the Amendment makes clear that Congress only intended to prohibit payment for abortions done as a "method of family planning or for emotional or social convenience." H.R.(Conf.)Rep. No. 94-1555, 94th Cong., 2d Sess. 3 (1976).

II

This suit was filed on October 1, 1976, the day after Congress passed the Labor-HEW Appropriations Act over the President's veto, and the day the Act became effective. Joined as plaintiffs at the same time are six women, 2/ a doctor who regularly performs abortions, and a clinic at which abortions are often performed.

Three of the female plaintiffs are now pregnant; as of October 8, 1976, one was six weeks, another seven weeks, and the third was twelve weeks pregnant. Each of these plaintiffs is a resident of the District of Columbia and iseligible for Medicaid benefits under the D.C. medical assistance program. Each would like to have an abortion either for emotional or social convenience or for family planning reasons, but claims that she may not be able to because the Hyde Amendment prevents the use of Medicaid funds for such abortions and because she may not be able to afford to pay for the operation herself.

2./ Three women who have not yet had abortions moved to intervene as plaintiffs shortly after suit was instituted. Since the government does not oppose this, leave to intervene is hereby granted.

The other female plaintiffs have already had abortions, all for emotional or social convenience or for family planning reasons; all had them on September 23, 1976. These women were between five and seven weeks pregnant at the time the operations were performed. Two of them are residents of the District of Columbia and one is a resident of Virginia. Each is elgible for Medicaid under her local medical assistance program, but none has yet received notice that her abortion was paid for through that program. These plaintiffs concede that this in itself does not mean much, however, since the local medical programs normally take six to eight weeks to pay for the medical services rendered under Medicaid. But nevertheless, they claim that, since their reasons for having the abortions would not permit federal funds to be spent on their abortions, the local medical assistance program will not pay for their operations. These plaintiffs have not alleged, however, that each will be personally liable for the cost of her abortion if the local jurisdiction does not pay for it.

The seventh plaintiff is Milan Vuitch, M. D. He has performed and supervised abortions in the past on women eligible for Medicaid and would like to continue to do so in the future. The plaintiff Laurel Clinic, Inc., is an abortion clinic of which Dr. Vuitch is the medical director. The abortions that have already been performed on the female plaintiffs in this case have been done by Dr. Vuitch or under his supervision at the Laurel

Clinic. Neither Dr. Vuitch nor the clinic has yet been paid for the three abortions that have been performed and, they claim, neither will be paid.

All of the plaintiffs make the same basic claim, namely, that the Hyde Amendment impermissibly burdens the right of the female plaintiffs to exercise their fundamental right under Roe v. Wade, 410 U.S. 113(1973), to decide for themselves, in consultation with their physicians, whether or not to have abortions, and unreasonably discriminates against the exercise of that right by continuing to allow federal funds to be spent for other medical services and childbirth care. This, they claim, violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution. 3/

To obtain relief, the plaintiffs have sued the Secretary of HEW, who is the one in control of the federal funds appropriated for disbursement under Medicaid, to obtain an injunction preventing him from limiting his disbursements as provided in the Hyde

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3/ The plaintiffs have not explicitly limited their claims to any of the trimesters of pregnancy. It does not appear, however, that abortions can legally be performed in the District or Virginia except under conditions which the federal government would in any event continue to support even under the Hyde Amendment. The Court will presume that the plaintiffs wish to limit their claims to persons six months pregnant or less.

Amendment. 4/

On October 1, 1976, Judge Waddy issued a temporary restraining order to preserve the status quo in this case until a hearing could be held. On October 12, 1976, this Court held a hearing on the plaintiffs' motion for a preliminary injunction and extended the temporary order for nine days so that it could consider the arguments of the parties. The Court has carefully considered the arguments made and the memoranda filed by all parties and concludes that the order must be dissolved.

III

In addressing the issues raised in this case, the Court is not called upon to determine whether abortions performed during the first six months of pregnancy or at any time, are or are not proper; it has simply been asked to decide what the federal law on this subject is. But the Court has concluded that it cannot answer even this limited question, since, in its view, the plaintiffs have not alleged a "case or controversy" over which this Court is permitted, under Article III of the Constitution, to exercise jurisdiction.

A.

The policies that a court must consider in determining whether a party has presented a justiciable "case or controversy" have

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4/ A number of persons have sought to intervene as defendants. Given the disposition of this case, the Court need not address these motions.

until recently been somewhat unclear. For some years, the principal focus of attention was on whether the plaintiff had alleged an injury of such dimension, of such imminence, and of such a personal nature as to assure the "concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions." Baker v. Carr, 369 U.S. 186, 204(1962).

Recent Supreme Court cases have indicated that a second and overriding policy must also be considered. That policy is to insure that a court stays within the bounds placed on it by the constitutional scheme of the separation of powers. The focus of this inquiry is on the relief which the court is able to give and on the effectiveness of that relief in given circumstances.

To date, the cases which have specifically dealt with this second policy have been concerned with the standing aspect of jurisdiction under Article III. E.g., Simon v. Eastern Kentucky Welfare Rights Organization, 48 L.Ed.2d 450(1976); Singleton v. Wulff, [citation omitted]. These cases make clear that before a court may exercise jurisdiction, the plaintiff must show to a "substantial likelihood" that if he is victorious in the suit and relief is granted, he will not suffer the injury he fears. Simon v. Eastern Kentucky Welfare Rights Organization, supra, at 465.

Without a doubt, a similar inquiry must be made with regard to the ripeness aspect of

jurisdiction under Article III. If that is so, then a plaintiff must also show to a "substantial likelihood" that if relief is denied, he will in fact suffer the injury he fears. This is precisely the thrust of the Supreme Court's recent discussions on ripeness in O'Shea v. Littleton, 414 U.S. 488, 493-99(1974), and in Rizzo v. Goode, 46 L.Ed. 2d 561, 570(1976).

B.

As noted in Part II above, the interest which the plaintiffs here claim is being or will be injured is that of the freedom of these women to decide for themselves, in consultation with their physicians, whether or not to have abortions. The injury they claim is that the Hyde Amendment will prevent the use of federal Medicaid funds to pay for their abortions and that this will prevent the District of Columbia and Virginia from providing any funds under their medical assistance programs for their abortions; physicians,in turn, will then refuse to perform abortions on them unless they promise to pay for the operations themselves. This, they claim, will burden or perhaps deny altogether their freedom of choice on whether or not to have abortions; and, given the fact that other medical services and also childbirth care will continue to be available, this works a discrimination against them in the exercise of that freedom.

The Court may assume for the sake of argument that, if an injury is imminent, at

least those plaintiffs who are still pregnant have standing to sue to prevent it. But the Court does not believe that the injury those plaintiffs allege is in fact imminent enough to present the requisite "case or controversy."

The most troublesome link in the plaintiffs' chain of causation is the allegation that both the District of Columbia and Virginia will refuse to pay for those abortions for which the federal government will not reimburse them. The Court specifically asked counsel for the plaintiffs about this link at the oral hearing. (Transcript at 10,33.) Counsel was unable at that time to answer the Court's questions satisfactorily, and the Court gave plaintiffs five additional days in which to submit additional argument on this point. Subsequently, they submitted a number of statements of officials of various states, but not of Virginia or the District of Columbia. One, a Maryland official, states that that state has no plans to pick up the cost of abortions such as are at issue here should the Hyde Amendment go into effect. An official from Georgia says that it is "very unlikely" that it will be able to absorb the added costs of paying for such abortions completely on its own. A Dr. Baird of Minnesota states that, in his opinion, he has no authority to disburse funds for abortions solely out of state funds. State officials in California, Colorado and South Carolina say much the same thing.

The plaintiffs also allege that in Texas

the state constitution forbids grants for medical care when federal matching funds are unavailable.

None of these statements, is should be noted, purports to be a binding statement on the legal obligations of the state by an official or body authorized to make such statements.

The relevance of all this to this case presumably is that officials in the District of Columbia and Virginia would say something similar. But the Court can hardly infer from these statements that there is a "substantial likelihood" that the District of Columbia and Virginia will withhold payments to the plaintiffs.

However, even if the Court took a more favorable view of these statments than it does, and accepted as proven that the relevant jurisdictions will refuse to make the payments themselves, this would not wholly answer the question. For, as indicated in Part I, above, both the District of Columbia and Virginia have undertaken, under their local plans, to pay for abortions in situations such as are contemplated in this case. Until amended, these plans continue in force and no change is authorized in the level of services which must be provided. 45 C.F.R. § 201.3(1975). Nor can the level of services called for in the plans be reduced before recipients are given "timely and adequate" notice of the change. 45 C.F.R. § 206.10(a)(7)(1975). Since it does not appear that the District or Virginia has either moved to

amend its plan or taken "proposed action to discontinue, terminate, suspend or reduce assistance" related to the treatment of pregnancy, id., they may well be legally obligated to continue to pay for these abortions under their Medicaid plans.

Nor have the plaintiffs alleged that the District of Columbia and Virginia are free to discontinue paying for abortions under Title XIX. In Doe v. Beal, 523 F.2d 611 (3d Cir. 1975) (en banc), cert. granted, 96 S.Ct. 3220 (1976), the Court of Appeals for the Third Circuit held that Title XIX commands the states to fund abortions in situations where, as here, the jurisdiction has decided to pay for the health care of women who elect to give birth to a child. True, Beal was decided before the Hyde Amendment became effective. But the effect of this provision on that case may not be significant, especially since Title XIX only binds the federal government to reimburse the states "[f]rom the sums appropriated therefor." 42 U.S.C. § 1396b(a)(1970). A state, then, may have assumed the risk, in setting up its medical assistance program , of in fact paying for a somewhat greater share of the cost of the program than it might have originally anticipated. Certainly, plaintiffs have made no showing to the contrary.

Finally, the plaintiffs have failed to suggest that Virginia and the District are free to refuse to pay for these abortions under the U.S. Constitution. Several courts have held that the states participating in

the Medicaid program are under a general constitutional obligation to fund abortions on an equal basis with other medical care and with childbirth care. Roe v. Norton, 408 F. Supp. 660(D. Conn. 1975), prob. juris. noted sub nom. Maher v Roe, 96 S.Ct. 3219 (1976); Doe v Rampton, 366 F.Supp. 189 (D. Utah 1973). True again, these cases were decided before the Hyde Amendment became effective, but again, it is not clear that this would change the result in those cases either.

Despite all these contingencies, the plaintiffs have nevertheless suggested that, whatever the District of Columbia and Virginia may do, and whatever they may be obligated to do, the fact remains that physicians are not now likely to perform abortions for women such as those in this case because of fears that these jurisdictions would not reimburse them for the operations. But for all that appears on the record, this may simply be because the physicians are ignorant of how the Medicaid system works and of what the legal obligations of the District of Columbia and Virginia might be.

In sum, the plaintiffs simply have not shown that if relief is denied in this case they will suffer an injury of any substance whatsoever. The Court therefore concludes that the plaintiffs have not alleged a ripe "case or controversy" over which this Court can constitutionally exercise jurisdiction.

IV.

For all of the above reasons, the Court

also holds that the plaintiffs have not alleged that the injury they fear is so imminent as to require the exercise of the Court's equity jurisdiction. See O'Shea v. Littleton, 414 U.S. 488(1974). But one additional consideration bolsters this determination. It is a matter of strict federal policy that courts avoid deciding questions of federal constitutional law when it is reasonably possible that an alternative nonconstitutional ground exists for reaching the same result. Ashwander v. TVA, 297 U.S. 288, 345-48(1936). Cf. Singleton v. Wulff, 49 L.Ed.2d 826, 833, 839 n.3(1976). This principle applies in this case. As indicated in Part IIIB above, there is a fair possibility that a court can avoid deciding the difficult question of whether the federal government can constitutionally refuse to contribute to the performance of certain abortions by construing local medical assistance plans or a federal statute. Of course, this Court does not have the power in this case to indicate whether in fact that constitutional issue can be avoided or not. But since the plaintiffs here can be left to that recourse without any apparent injury to them, this Court finds that, as a matter of equity jurisdiction also, this case should be dismissed. See O'Shea v. Singleton, supra.

V.

For the reasons indicated above, it is this 21st day of October, 1976,

ORDERED that this action be, and the same hereby is, dismissed for lack of jurisdiction.

/s/ John J. Sirica

United States District Judge

United States District Court
For the District of Columbia

Chambers of
Judge John J. Sirica

March 21, 1977

Alan Ernest, Esq.
5713 Harwich Ct. #232
Alexandria, Va. 22311

Dear Mr. Ernest,

In answer to your letter of March 7, 1977, the plaintiffs in Civil Action No. 76-1835 have, as you know, appealed its dismissal. The Court of Appeals therefore now has exclusive jurisdiction over the case. The next action will be taken by that court.

I hope that this answers your questions about the case.

Sincerely,

/s/ Timothy P. McCullom
Law Clerk